LEGISLATIVE SERVICES AGENCY

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# Iowa Legislative Interim Calendar and Briefing

December 17, 2015 | 2015 Interim No. 10

## In This Edition



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## December 2015

| Su | Mo | Tu | We | Th | Fri | Sat |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

## January 2016

| Sun | Mo | Tue | We | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |
| 31 | | | | | | |

Friday, December 18, 2015
**Telecommunications Company Property Tax Review Committee**
9:00 a.m., Room 103, Supreme Court Chamber, Statehouse

January 8, 2016
**Administrative Rules Review Committee**
9:00 a.m., Room 116, Statehouse

Monday, January 11, 2016
**Eighty-sixth General Assembly 2016 Regular Session Convenes**
10:00 a.m., Senate and House of Representatives Chambers, Statehouse

**Telecommunications Company Property Tax Review Committee**
Co-chairperson: Senator Janet Petersen
Co-chairperson: Representative Thomas R. Sands
Location: Room 103, Supreme Court Chamber, Statehouse
Date & Time: Friday, December 18, 2015, 9:00 a.m.
LSA Contacts: Michael Duster, Legal Services, (515) 281-4800; Mike Mertens, Legal Services, (515) 281-3444; Kathy Hanlon, Legal Services, (515) 281-3847.
Agenda: Discussion of the background of the Telecommunications Company Property Tax, Summary of the Telecommunications Property Tax Report prepared by the Department of Revenue, and input from a telecommunications industry panel.
Internet Page: https://www.legis.iowa.gov/committees/committee?ga=86&session=1&groupID=24161

**Administrative Rules Review Committee**
Chairperson: Representative Dawn Pettengill
Vice Chairperson: Senator Wally Horn
Location: Room 22, Statehouse
Date & Time: Friday, January 8, 2016, 9:00 a.m.
LSA Contacts: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354
Agenda: Published in the Iowa Administrative Bulletin:
https://www.legis.iowa.gov/IowaLaw/AdminCode/bulletinSupplementListing.aspx
Internet Page: https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705

## SCHOOL FINANCE INEQUITIES STUDY COMMITTEE

December 2, 2015

**Co-chairperson:** Senator Brian Schoenjahn

**Co-chairperson:** Representative Ron Jorgensen

**Overview and Committee Charge.** The School Finance Inequities Study Committee was established to review current provisions of the school finance formula and consider alternatives for achieving a more equitable application across all public school districts in the state. The committee's review was specified to include transportation funding with a particular emphasis on small and rural school district transportation funding levels, school district property taxation levels, at-risk student funding challenges, and other school finance formula provisions which may result in funding disparities between school districts.

**Transportation Costs Inequities.** Dr. Jeff Berger, Deputy Director, Iowa Department of Education (DE), provided the committee with statewide and school district level transportation cost data including a historical analysis of route miles traveled, pupils transported, net operating transportation costs, average cost per mile, average cost per pupil, and average cost per pupil transported. The data presented was from the years 2010 through 2014 and demonstrated significant increases in transportation costs over that period of time. Dr. Berger outlined several items for the committee to consider when analyzing the data provided, including whether or not a particular school district's transportation costs include costs for transportation services that are not required by law, including the provision of transportation for nonpublic school students, and the current limits placed on the amount of time students are allowed to be transported. Dr. Berger also noted that school consolidation often does not reduce transportation costs for districts and outlined the existing funding structure for school district transportation costs.

Mr. Shawn Snyder, Finance Support Director, Iowa Association of School Boards (IASB), provided additional statistical analysis of school district transportation costs in Iowa including a comparison of each district's transportation cost as a percentage of the district's regular program district cost. Mr. Snyder outlined a proposal to address transportation cost inequities through additional supplementary weighting used in determining a school district's overall budget. The proposed transportation supplementary weighting would be based on three factors: net operating transportation costs, an enrollment factor, and a route mils per pupil factor. As the result of using supplementary weighting, funding for the proposal would be a mix of state funding and local property tax. The IASB proposal phases in the additional weighting over a five-year period seeking to provide $30 million in FY2016-2017 and increases that weighting until FY2020-2021 when the total funding would be $150 million. Mr. Snyder noted that total costs of the proposal would be impacted by the state percent of growth set by the General Assembly for each of those fiscal years. Under the proposal, all school districts would receive additional funding, not just those with high transportation costs, and funding generated would be limited to expenditures for non-discretionary transportation expenses of the district. Some members of the committee questioned the need to provide assistance to all districts instead of targeting those districts with the highest costs. Members of the committee were informed that discretionary transportation costs were included in the total transportation costs being reported by school districts to DE. Several members identified the need for transportation cost data, excluding discretionary costs being incurred by districts.

**District Cost Per Pupil Inequities.** Dr. Berger acknowledged that Iowa's school finance formula is widely believed to be a stable and equitable formula, but he also noted that the formula's complexities and modifications over time have resulted in some inequities that can be improved upon. Currently, the funding formula allows for variances in the amount of each district's cost per pupil. This variance creates differences in the overall spending authority per pupil among school districts. Dr. Berger outlined three proposals that seek to eliminate or reduce that variation in district cost per pupil. Those proposals include (1) increasing specific districts' cost per pupil over time until all are equalized, (2) reducing specific districts' cost per pupil over time until all are equalized, or (3) enactment of variable percents of growth for school districts based on district cost per pupil to offset the differences until all district cost per pupil amounts are equalized.

Ms. Margaret Buckton, representing Urban Education Network of Iowa (UEN), provided background on the historical changes to the funding formula and the circumstances that created the current inequity. She also described the current level of inequality among school districts. In FY2015-2016, the state cost per pupil is $6,446 and 164 districts are limited to this amount for their district cost per pupil. The other 172 districts have a district cost per pupil ranging from $6,446 to $6,621, which creates additional spending authority for the district that may be funded through local property taxes. Ms. Buckton also provided data relating to the distribution of those districts with higher per pupil costs along the spectrum of $175 differential range. For approximately 65 percent of those 172 districts, the amount per pupil difference is $70 or less per pupil. She provided analysis of district cost per pupil data as it related to other district charac-

*(School Finance Inequities Study Committee continued from page 3)*

teristics such as certified enrollment, transportation cost per pupil, the percentage of enrollment that receives free and reduced-price lunch, percentage of enrollment that are minorities, and property value in the district per pupil. Ms. Buckton outlined components of a proposal that would dedicate $15 million per year to close the gap in the differences in district cost per pupil over a period of five to six years by increasing those districts on the lower end and holding those districts at the higher end harmless. She also identified additional methods of funding the proposal.

Mr. Snyder provided data and geographical analysis of the differences in district cost per pupil in Iowa and outlined a proposal recommended by IASB. Under the proposal, the state cost per pupil is increased $20 per year from FY2016-2017 through FY2023-2024 and then an additional $15 is added to the state cost per pupil in FY2024-2025, which results in the equalization of all district costs per pupil for all districts in the state. According to Mr. Snyder all school districts would continue to receive the benefit of increased funding resulting from supplemental state aid established by operation of the formula. The annual increased cost during the phase-in period could be increased or decreased based on the length of the phase-in. Committee members discussed how the existing property tax inequities between districts may impact the efficacy of this proposal and whether a complete, rather than a partial, equalization of the differences is necessary.

**Property Tax Inequities.** Ms. Buckton provided a brief history on the establishment and evolution of the school finance formula and the replacement of the prior system that relied almost exclusively on local property tax revenue. She utilized the Okoboji school district and the Sioux City school district to demonstrate how property values and real estate conditions inside the territory of a school district can impact the property tax burden for residents of those districts. Ms. Buckton also compared the formula's mix of state funding and local funding to other states, and illustrated how the property tax rates among districts would vary if the current state funding portion of the formula was removed and replaced with local property taxes. Ms. Buckton identified several recommendations for the committee to consider when analyzing proposals to address the property tax inequity, including the use of local and state revenue, holding harmless those districts that may incur increased property taxes, and the use of existing funding mechanisms to effectuate the equalization.

Mr. Snyder provided data and geographical analysis of the property tax valuation per pupil in school districts throughout the state as well as graphical analysis of the differences in funding sources for school districts with low property valuations as compared to those with high property valuations. He also described the property tax relief currently provided to districts through the Property Tax Equity and Relief Fund (PTER). FY2015-2016 PTER revenues provided property tax relief to 59 districts. In addition, $31.1 million in property tax relief was also provided to all school districts through the School District Property Tax Replacement Payments (PTRP). Mr. Snyder outlined three options for addressing the property tax inequity in the current formula. Option 1 would freeze the regular program foundation base percentage at the "effective" regular program foundation base percentage for FY2015-2016 (approximately 88.4 percent due to PTRP) and add any amount appropriated for any additional PTRP pick-up approved for FY2016-2017 to PTER Fund. Option 2 would freeze the regular program foundation base percentage at the "effective" regular program foundation base percentage for FY2016-2017 (resulting from supplemental state aid change for FY2016-2017) and increase the percentage (currently 2.1 percent) of Secure an Advanced Vision for Education (SAVE) excess that flows into PTER Fund. Option 3 would again freeze the regular program foundation base percentage at the "effective" regular program foundation base percentage for FY2016-2017 (resulting from supplemental state aid change for FY2016-2017), increase the uniform levy rate from $5.40 to $6.40, and then use the resulting state foundation aid savings to further increase the regular program foundation base percentage. Mr. Snyder specified that the three options can be modified to provide the desired equalization effect. Committee members acknowledged that statutory property tax changes will also begin to impact school districts and that these proposals only impact the primary school property tax levies and would still leave inequities for other levies available for specific funding programs.

**At-Risk and English Language Learners Funding Challenges.** Dr. Berger provided the committee with demographic data about the 2013-14 student population in Iowa for both public and nonpublic schools, including the percentage of enrollments based on race and ethnicity and the percentage of enrollments for English language learners (ELL). To show the increase in the minority and ELL student populations in Iowa, he compared the current demographic data to the data for 2000-2001. He also cited the disparity in performance between ELL students and non-ELL students in the areas of reading and math. The weighted enrollment for ELL students provided through the school finance formula has increased from 8,151 in 2000-2001 to 18,008 in 2013-14. Dr. Berger additionally noted the ability of school districts to seek additional funding authority through the School Budget Review Committee. In response to the committee's questioning, he acknowledged three ongoing ELL pilot projects funded by the General Assembly be-

*(School Finance Inequities Study Committee continued from page 4)*

ing undertaken to analyze the efficacy of innovative ELL programs. Dr. Berger informed the committee that data collection for those pilot projects was occurring and results would be forthcoming.

Ms. Melissa Peterson, Lobbyist, Iowa State Education Association (ISEA), noted that the existing supplementary weighting of .22 provided to ELL students is designed to provide the additional funding necessary to meet the additional needs of those students. Ms. Peterson acknowledged, however, that this uniform weighting is not sufficient to meet the requirements for all students and that the services and instruction being provided to these students goes beyond the traditional classroom instruction that was envisioned when the weighting was first established. Ms. Peterson also identified the five-year supplementary weighting period as being insufficient for many students and recommended increasing that period to seven years.

Dr. Tammy Wawro, Teacher, Cedar Rapids Community School District, and President, ISEA, encouraged the committee members to personally visit an ELL classroom to fully appreciate the type of instruction being provided, to review the ELL Task Force Report that was issued in November 2013 for recommendations on addressing many of the issues facing ELL students, and to establish a permanent ELL Task Force with additional classroom teacher involvement. Dr. Wawro described the existing challenges in the Cedar Rapids school district due to the increase in students from areas like the Congo and Nepal, where students experienced traumatic events and require counseling in addition to ELL instruction. She acknowledged that teachers have been required to adjust and learn to meet the needs of these populations and that the number of languages to be served, as well as the individualized needs of students has stretched their resources. Dr. Wawro emphasized that the stretched resources impact non-ELL students as well by diverting personnel and money to provide quality education to all students. In response to committee questioning, Dr. Wawro discussed the possibility of further individualization of services for each student and whether further categorization of specific groups of ELL students for additional supplementary weighting would be beneficial. She cited the increased cost for such individualized assessments to determine supplementary weighting amounts. Additional discussion occurred regarding the amount of instruction and services needed for students based upon the age at which they enter the public school. In many cases, the older students require more time to acquire the necessary language skills as compared to younger students.

Dr. Berger provided graduation data for students identified as at-risk and graduation rate data for all students, including specific graduation rates for specific minority students, ELL students, students with individualized education plans, and socioeconomic status. He also acknowledged recent legislative action that allow for greater flexibility in the use of at-risk and dropout prevention funding.

Mr. Chris Bern, Teacher, Des Moines Public Schools, detailed his experience working in the academic support lab classroom at North High School that serves both potential dropouts as well as reengaged students. The primary role of the academic support lab is to assist those students with making up credits, primarily for classes those students previously failed. Mr. Bern described his role as more diverse than just a classroom teacher because he often acts as counselor, attendance monitor, and social worker in addition to collaborating with other school and social work professionals. Of the 229 graduates from North High School last year, 66 were part of the academic support lab program. Mr. Bern noted that the students participating in the program are very diverse and come from a variety of backgrounds. Mr. Bern emphasized the importance of the program because those students are typically the individuals who are remaining in the Des Moines area after they complete school. Mr. Bern identified the attrition rate for the program but stated he continually tries to bring those students back to the program. Mr. Bern also detailed the story of a specific student that received his diploma in November 2015. Committee members discussed the benefits of at-risk programs in increasing an individual's earning capacity, decreasing the likelihood for arrest or incarceration, increasing life expectancy, and the likely reduction in societal costs attributable to that individual.

**Committee Discussion.** Committee members discussed a desire for a report that summarized the presentations made to the committee that would be available for review by the membership in both the House and the Senate. Committee members cited existing funding mechanisms like the PTER Fund and extension of the SAVE portion of the sales tax as possible sources of agreement, but noted the financial circumstances of the budget or the willingness to reallocate existing funds would impact what decisions, if any, are made. Committee members also discussed the identified inequities as part of the overall funding decisions for education in the state. Several members also discussed the possibility of incremental steps toward addressing some of the inequities, the need for additional information from DE and the stakeholders, and the specific circumstances facing particular school districts as compared to neighboring school districts.

*(School Finance Inequities Study Committee continued from page 5)*

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Internet Site: https://www.legis.iowa.gov/committees/committee?ga=86&session=1&groupID=24164

### ADMINISTRATIVE RULES REVIEW COMMITTEE

December 8, 2015

**Chairperson:** Representative Dawn Pettengill
**Vice Chairperson:** Senator Wally Horn

**EDUCATIONAL EXAMINERS BOARD, *Licensure Fees—Increase*, 11/11/15 IAB, ARC 2229C, ADOPTED.**

**Background.** This rulemaking increases all board licensure fees by $4. The board anticipates increased expenses that will exceed existing revenue in future fiscal years if its revenues are not increased. 2015 Iowa Acts, HF 658 transferred $600,000 from the board to the Department of Education (DE).

**Commentary.** D.T. Magee, Executive Director, Iowa Board of Educational Examiners, and Ms. Darcy Hathaway, Attorney, Iowa Board of Educational Examiners, described the recent history of the board's funding. They explained that the recent transfer of $600,000 away from the board is the third time in recent years that such a transfer has occurred. The transfers totaled about $8 million, or four years of board funding. The board does not have a surplus with which to make up this loss of funds as it has for past transfers. The representatives discussed the various services the board provides and stated that the board will need to either raise fees or cut services to maintain sustainable funding levels. They explained that a fee increase of this amount will allow the board to maintain sustainable funding levels without seeking an appropriation from the General Assembly in the near future. They noted that pursuant to Iowa Code section 272.10(2), the board is required to deposit 25 percent of its fees in the General Fund, retaining only 75 percent.

In response to questions from committee members, the representatives explained the board's various expenses such as fingerprinting and new information technology, measures the board has taken to reduce costs including reduced hours of operation, and the board's annual cycle of fee receipts.

Committee members questioned whether it is appropriate for the board to respond to its current funding shortfall through such a fee increase, whether the board could further reduce expenses, and whether statutory language requiring the board to deposit 25 percent of fees collected in the General Fund should be modified through legislative action.

**Action.** A motion for a session delay passed on a nine-to-zero vote (seven votes required to pass).

**NATURAL RESOURCE COMMISSION, *Deer Hunting*, 571-106.7(6) and 571-106.9, SPECIAL REVIEW.**

**Background.** A committee member received concerns from a nonmember legislator, Representative Greg Heartsill, regarding two of the Natural Resource Commission's (NRC) rules related to deer hunting. The committee member requested NRC representatives attend the meeting to address the issues. The rules relate to permitted methods of taking deer and the use of transportation tags.

**Commentary.** The NRC was represented by Conservation and Recreation Division Administrator Ms. Kelley Myers, Conservation Officer Mr. Jeff Swearingen, and Wildlife Bureau Chief Mr. Dale Garner. Ms. Myers explained that rule 106.7(6) prohibits the use of certain devices to attract an animal, including bait and domestic animals. Currently, 22 states prohibit baiting, including Iowa. Ms. Myers explained that the goal of the rule is to preserve the tradition and legacy of hunting and the spirit of fair chase, and that the use of bait is generally considered unethical. Ms. Myers also noted that NRC is concerned about the spread of disease. Nevertheless, incidents of baiting have increased in the state. Ms. Myers pointed out that NRC cannot prohibit retail stores from selling bait.

Representative Heartsill spoke about the lack of distance limitations or acceptable times for using or removing bait and asked NRC that such measures be considered. He noted that one concern with the use of salt or mineral blocks is that trace minerals can remain in soil for a substantial period of time after a block is removed from the land and a landowner can be cited if those minerals are found by a Department of Natural Resources (DNR) conservation officer. Representative Heartsill also expressed concerns with DNR's civil forfeiture authority.

A committee member asked whether the use of scent is also illegal. Mr. Garner stated that scents are legal and that bait is something consumable. He added that some local governments have made the use of scents illegal. The committee member suggested NRC clarify the definition of bait as used in the rule, including appropriate times for feeding wildlife. Mr. Garner responded that presently, there are no time restrictions for feeding wildlife. He added that several

*(Administrative Rules Review Committee continued from page 6)*

years ago, he and the state veterinarian testified that feeding wildlife should be illegal, primarily out of concern for disease transmission.

Ms. Myers explained that rule 106.9 regarding transportation tags is taken almost verbatim from the related statute. She cited the rule as a valuable anti-poaching tool for NRC and DNR. She explained that the intention of the rule is to ensure that within a reasonable amount of time and before a deer is moved, the deer be tagged.

A committee member asked what regulatory authority NRC or DNR has if a person is moving part or all of a deer with no expectation of preserving or consuming the animal. Mr. Swearingen stated that the intention of DNR is to properly remove a killed animal from a field. Historically, removal of dead deer has been done for consumption and to prevent the wasting of a deer carcass. The committee member asked whether a person needs to tag an animal that has already begun decomposing or if only a rack or skeleton is remaining. Mr. Swearingen stated that if a person is unsure, he or she can call a local conservation officer who can issue a salvage tag. A salvage tag is not necessary for a shed antler.

A committee member asked whether DNR has consistent expectations for how long an animal can remain in a field and how that impacts what tag should be issued. Mr. Swearingen responded that there are no specific written guidelines, but DNR trains all conservation officers to ensure they make consistent determinations. The committee member suggested NRC consider adopting more specific written guidelines to provide further consistency across the state.

Representative Heartsill reiterated the committee member's concerns with the lack of consistent guidelines. He also expressed concern with the spirit of the rule relating to how far a hunter can move a carcass before being required to tag it, citing instances where it may be difficult to properly tag a carcass before moving it out of a precarious location.

**Action.** No action taken. The committee chair suggested to Representative Heartsill that he submit a bill during the upcoming legislative session to address his concerns.

**REVENUE DEPARTMENT, *Qualification for Manufacturing Exemption*, 11/11/15 IAB, ARC 2239C, AMENDED NOTICE.**

**Background.** This rulemaking amends rules relating to the manufacturing sale and use tax exemptions found in Iowa Code sections 423.3(47) and 423.3(48) and to the definitions of several applicable terms, including but not limited to definitions for tax-exempt "computers," "machinery," "equipment," "replacement parts," and "materials used to construct or self-construct computers, machinery, or equipment." The rulemaking also amends rules on the treatment of these tax-exempt items as they relate to the taxation of construction activities under Iowa Code sections 423.2(1)(b) and 423.2(1)(c). Under the department's current rules, many of these items could be considered real property and taxed as building materials when purchased in furtherance of a construction contract, thereby making them ineligible for the manufacturing sales and use tax exemption. The proposed amendments eliminate this distinction and provide that the items will be eligible for the manufacturing sales and use tax exemption.

This amended notice revises the applicability date of this rulemaking. The rulemaking is prospective and will only apply to sales occurring as part of a contract entered into on or after July 1, 2016. The applicability date in the previous notice of intended action was January 1, 2016.

**Commentary.** Ms. Victoria Daniels, Division Administrator Policy and Comments, Iowa Department of Revenue, explained that since the committee first reviewed this rulemaking in October, the department has received additional public comments supporting and opposing the rulemaking, has had discussions with the Flood Mitigation Board and affected communities regarding possible fiscal impacts on the state's sales tax-funded Flood Mitigation Program, has worked with the Legislative Service Agency's Fiscal Services Division to develop further fiscal analysis of this rulemaking, and will have an updated fiscal analysis ready when this rulemaking is adopted.

Ms. Daniels answered various questions from committee members regarding how the department conducted its fiscal analysis of this rulemaking. She also stated that the fiscal impact of this rulemaking on river communities through the Flood Mitigation Program could not yet be determined.

Some committee members asserted that the department overstepped its statutory authority by making such significant tax policy by rule. They asserted that such tax policy decisions should be made by the General Assembly. Ms. Daniels responded that because the General Assembly did not define certain statutory terms relating to the sales tax exemption at issue, it is the role of the department to define those terms by rule, which is what this rulemaking does. She explained that this rulemaking strikes the department's prior rules relating to that exemption, including certain rule-based terms not used in statute, and provides definitions for those undefined statutory terms.

*(Administrative Rules Review Committee continued from page 7)*

Public comment was heard from representatives of Cargill, the Iowa Taxpayers Association, John Deere, and the Association of Business and Industry in support of this rulemaking. Commenters generally stated that this rulemaking will provide clarity to the department's rules for this exemption, that the department's existing rules for the exemption are difficult to comply with, that the rulemaking represents good tax policy, and that the rulemaking will have positive economic effects.

**Action.** A motion for the committee to object to the rulemaking failed by a five-to-five vote.

**HUMAN SERVICES DEPARTMENT, *Medicaid Managed Care*, 11/11/15 IAB, ARC 2241C and 2242C, NOTICE.**

**Background.** These proposed rules implement managed care for Iowa's Medicaid program pursuant to 2015 Iowa Acts, SF 505. Under these rules, HAWK-I members, Iowa Health and Wellness members, and the majority of Medicaid members will have their services coordinated through a managed care organization (MCO).

The rules include requirements for managed care organizations to participate in a contract with the department, enrollment and disenrollment procedures, identification of covered services, access to services and consumer choice of providers, the member appeal and grievance process, record management and documentation, claims payment, quality assurance and program integrity, removal of existing language made obsolete by managed care, and other matters.

The department plans to implement managed care beginning January 1, 2016. The department will file these rules Emergency After Notice in order to meet the January 1, 2016, implementation date.

**Commentary.** The department was represented by Ms. Mikke Stier, Division Administrator, Iowa Medicaid Enterprise, Ms. Nancy Freudenberg, Compliance Officer, Appeals Section, and Deb Johnson, Bureau of Long Term Care.

Committee members asked for an explanation of the Governor's recent announcement of a grace period for Medicaid providers to contract with MCOs. The representatives explained that providers will be given an additional 90 days, until April 1, 2016, before being subject to a 10 percent reimbursement rate reduction for not contracting with an MCO.

Committee members asked what will happen if the federal Centers for Medicare and Medicaid Services do not approve the state's managed care proposal before the program's intended January 1, 2016, start date. The representatives explained that the state's Medicaid program would continue using its current fee-for-service model.

Committee members asked whether procedures for matters such as incident reports, billing, and internal review of MCO decisions would be uniform across all four MCOs. The representatives explained that each MCO would have its own procedures.

Committee members asked if a patient who disagrees with an MCO's determination as to whether a procedure is medically necessary would be able to appeal that decision to the department, and the representatives stated that a patient would be able to do so. The representatives also explained that a patient can continue to receive a treatment for which an MCO has denied authorization pending an appeal, but would need to repay the cost of such treatment if the appeal is lost.

Committee members asked what information they could provide to constituents who have questions about managed care. The representatives explained that in addition to the department's call center, for which staffing has been increased, and website, the department has had many community meetings across the state and will set up more. Committee members asked that the department provide them with additional information that they could share with constituents, and the representatives agreed.

Committee members asked what a patient should do if their current providers have not contracted with an MCO. The representatives explained that a patient can continue to see their current providers without penalty, regardless of whether the providers have contracted with an MCO, for a period of time that varies depending on the services received, that a patient will be automatically enrolled with an MCO if the patient takes no action, and that there is a process to change MCOs or providers. The representatives also noted that MCOs are required to offer contracts to all providers and that a patient's provider not having a contract with the patient's MCO would constitute good cause to move to another MCO.

Additional discussion included the estate recovery process, safeguards against MCO conflicts of interest, cost savings associated with pharmacy services, whether managed care would include pharmacy benefit managers, medical necessity criteria, and figures for how many providers there are in Iowa and how many providers have contracted with each MCO. Committee members asked that the committee be provided with updates on how many providers have signed up with each MCO, and the representatives agreed.

*(Administrative Rules Review Committee continued from page 8)*

Public comment was heard from representatives of the Iowa Association of Community Providers, the Iowa Hospital Association, the Iowa Health Care Association, and AARP urging that various changes be made to the language of the proposed rules. Commenters were generally supportive of the new 90-day grace period for providers to contract with an MCO.

**Action.** A motion for the committee to suspend further action relating to ARC 2241C for 70 days failed by a five-to-five vote (seven votes required to pass).

**Next meeting:** Statehouse Room 116, on Friday, January 8, 2015, beginning at 9:00 a.m.

*Secretary ex officio:* Stephanie Hoff, Administrative Code Editor, (515) 281-3355.

*LSA Staff:* Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

Internet Page: https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705

## LEGAL UPDATES

**Purpose.** Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other interested persons of legislative issues that are the subject of state court and federal district court decisions and regulatory actions, United States Supreme Court decisions, and Attorney General Opinions, including issues involving the constitutionality and interpretation of statutes adopted by the General Assembly. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

## LEGAL UPDATE—FREE SPEECH—LOCAL GOVERNMENT SIGNAGE REGULATIONS AND FIRST AMENDMENT

Filed by the United States Supreme Court
June 18, 2015

Reed et al. v. Town of Gilbert, Arizona et al.

No. 13-502, 135 S.Ct. 2218 (2015)

http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf

**Factual Background.** In 2005, the town of Gilbert, Arizona (Town) adopted a Sign Code (Code) to prohibit the display of outdoor signs without a permit. The Code regulated the size and appearance of, and the display period for, permitted signs. Ideological signs, political signs, and temporary directional signs were among the classes of signs categorized and regulated. Under the Code, ideological signs, those communicating noncommercial ideas, could be up to 20 square feet in area and were not subject to display period restrictions; political signs, designed to influence the outcome of an election, could be up to 16 square feet (on residential property) or 32 square feet (on nonresidential property) in area, and be displayed from 60 days prior to a primary election until 15 days after a general election; temporary directional signs, directing pedestrians and motorists to an event, could be up to six square feet in area and be displayed 12 hours prior to until one hour after an event.

The Good News Community Church (Church), led by its pastor, Clyde Reed (Reed), did not congregate at a permanent physical site, but each week held its religious services at different locations in the Town. The Church placed temporary directional signs around the Town each week to inform the public about the location and time of upcoming services. The Church did not comply with the Code's time restrictions for temporary directional signs, and the Town cited the Church twice for violating the Code.

**Procedural Background.** Following attempts to reach an accommodation with the Town, Reed, on behalf of the Church, filed a complaint in the United States District Court for the District of Arizona (District Court) asserting that the Code abridged their freedom of speech, as protected under the First and Fourteenth Amendments. The District Court denied Reed's motion for a preliminary injunction to stop enforcement of the Code. The Ninth Circuit Court of Appeals (Ninth Circuit) affirmed the District Court's ruling, finding that the Code's restrictions on temporary directional signs did not regulate speech on the basis of content, and remanded the case to the District Court to determine whether the sign classifications and regulations under the Code constituted content-based restrictions of speech.

On remand, the District Court held that the Code's classifications and regulation of different types of signs were content neutral and the Ninth Circuit affirmed, finding that the Town's interest in regulating temporary directional signs was unrelated to the content of those signs themselves. After finding that the Code was content neutral, the Ninth Circuit applied a deferential standard of review and held that the Code did not violate the First Amendment. The United States Supreme Court granted certiorari.

**Issues.** Whether a local government may classify different types of signs based upon the sign's general topic and regulate the size, appearance, and display of different types of signs on such a basis.

**Holding.** The Court held that the Code, treating classes of signs differently based upon the general topic of those signs, constituted content-based restrictions of speech in violation of the First Amendment, applied to the Town through operation of the Fourteenth Amendment.

**Majority Opinion by Justice Thomas.** Justice Thomas' majority opinion, joined by Chief Justice Roberts and Justices Scalia, Kennedy, Alito, and Sotomayor, reversed the decision of the Ninth Circuit Court of Appeals, holding that different provisions of the Town's Code constituted content-based restrictions of speech in violation of the First Amendment. The Court stated that a government has no power to restrict expression because of its message, ideas, subject matter, or content. The Court found that Code provisions constituted content-based restrictions on their face, without need to look beyond the text of the Code itself. The Court noted that the Code defines temporary directional signs on

*(Legal Update—Free Speech—Local Government Signage Regulations and First Amendment continued from page 10)*

the basis of whether a sign directs the public to a church service or to some other event, political signs on the basis of whether a sign is designed to influence an election, and ideological signs on the basis of whether a sign communicates noncommercial ideas. The Court then noted that the Code applies different restrictions on these different classes of signs, and reasoned that the restrictions imposed upon the size and display of a sign are determined entirely by the content of the sign itself. By way of example, the Court noted that under the Code, a sign regarding the time and place of a book club discussion of a treatise by John Locke would be treated differently than a sign supporting a candidate for office who is a John Locke adherent, which would in turn be treated differently than a sign expressing John Locke's political ideas.

In reversing the Ninth Circuit's ruling, the Court asserted that the First Amendment is hostile to regulations that prohibit or regulate public discussion of an entire topic, and is not simply hostile to restrictions placed on the expression of certain viewpoints. The Court reasoned that classifying regulated speech by its function or purpose restricts the message of the speaker. In preferring a bright line rule for content-based restrictions of speech, the Court held that the Code's restrictions on speech are based on the content of signs themselves rather than solely upon the identity of the speaker or on the occurrence and time of an event.

The Court found that the Code imposed content-based restrictions on free speech and applied a strict scrutiny analysis in holding that the Code violated the First Amendment. The Court declared that the Code was underinclusive and that the Town's enforcement of different restrictions on different categories of signs was not justified by the Town's asserted interests in preserving aesthetics and ensuring traffic safety. The underinclusiveness within the Code could plausibly be remedied by subjecting all permitted signs to the same size, appearance, and display period restrictions.

**Concurrence by Justice Alito.** Justice Alito filed a concurring opinion, joined by Justices Kennedy and Sotomayor, to provide further explanation of the powers of local governments to enact and enforce constitutional, content-neutral sign restrictions and to provide multiple examples of allowable restrictions in this area.

**Concurrence by Justice Breyer.** Justice Breyer filed a separate opinion, concurring only in the judgment of the Court. Justice Breyer argued against applying a bright line rule to the analyses of content-based restrictions of free speech. He stated that to hold that "such content discrimination triggers strict scrutiny is to write a recipe for judicial management of ordinary government regulatory activity" in areas such as securities regulation, energy conservation labeling-practices, prescription drugs, doctor-patient confidentiality, income tax statements, commercial airplane safety briefings, and even signs at petting zoos. Justice Breyer opined that the Court should treat content discrimination as strongly weighing against upholding a content-based restriction with implications in the areas of public forum and viewpoint discrimination jurisprudence, but argued that content discrimination in other areas should only serve as a useful analytical tool without being absolutely determinative.

**Dissent by Justice Kagan.** Justice Kagan filed a separate opinion, joined by Justices Ginsburg and Breyer, concurring only in the judgment of the Court. Justice Kagan challenged the Court's uniform application of the strict scrutiny standard in all content-based regulations of speech. Justice Kagan noted that there are two important reasons that justify subjecting such regulations to a strict scrutiny standard: preserving an uninhibited marketplace of ideas and showing hostility or favoritism toward an underlying message.

Justice Kagan opined that strict scrutiny is warranted when subject-matter restrictions of speech realistically show the intent or effect of favoring some ideas, but that the Court should be less vigilant in analyzing subject-matter restrictions when such intent or effect is not realistically possible and when a regulation's enactment and enforcement does not reveal governmental bias or censorship. Justice Kagan also discussed the broad impacts that the Court's decision will have on local government around the country, which have adopted and enforced similar signage codes, and the impacts on the federal court system which will have to hear new challenges to countless local signage regulations.

**Implications for Iowa.** The Court's decision will impact local governments in Iowa that have regulated signage in a manner similar to the Town's Sign Code (distinguishing between signs based upon subject-matter content). Beyond impacting only temporary directional signs, the Court's decision is also likely to impact local ordinances that seek to treat political signs differently than other categories of signs, unless a local government can prove that such a regulation is narrowly tailored to achieve a compelling governmental interest.

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**LEGAL UPDATE—DESIGNATION OF COUNTY SEATS—COUNTY HOME RULE**
Iowa Attorney General Opinion

*(Legal Update—Free Speech—Local Government Signage Regulations and First Amendment continued from page 11)*

January 16, 2015

Letter to State Senator Rich Taylor (District 42)

2015 Op. Atty. Gen — (#15-1-1)

http://publications.iowa.gov/18995/1/Taylor%2015-1-1.pdf

**Factual Background.** Iowa's Lee County was established in 1836 by an act of the Wisconsin Territorial Legislature; that same act established the city of Madison as the site for the Lee County District Court. After Iowa was admitted into the Union, the First Iowa Legislature passed a special law in 1848 (1848 Special Law) requiring Lee County to hold district court in both Fort Madison and Keokuk, and to maintain clerk of court and sheriff's offices at both locations. The 1848 Special Law also required that either the sheriff or sheriff's deputy reside in each city and that either the clerk of court or clerk's deputy reside in each city. The 1848 Special Law did not specifically provide for the designation of county seats.

**Legal Background.** Iowa provides that a county seat is the place designated for doing county business, erecting public buildings, holding court, and locating county offices. Iowa statutory law also specifically sets county seats as the locations of other governmental activities and requires that a county board of supervisors provide offices to county officials at the county seat.

In 1978, the Iowa Constitution was amended to provide counties with home rule authority, in all areas other than taxation, to "determine their local affairs and government" if not inconsistent with state law. From 1860 to 1981, Iowa law provided a statutory process for the relocation of county seats by petition and election. Iowa Code chapter 353, which regulated the process for the relocation of county seats, was repealed in 1981. Since repeal of that Iowa Code chapter, Iowa has not statutorily regulated the relocation or designation of county seats.

**Issues.** Whether current Iowa law permits the Lee County Board of Supervisors to eliminate the county seat designation for one of that county's two county seats.

**Conclusion.** The Attorney General Opinion (Opinion) concluded that the Lee County Board of Supervisors may eliminate the county seat designation for one of the county's two county seats under Lee County's home rule authority. The Opinion also concluded, however, that Iowa law requires the county to maintain district courts, clerk of court offices, and sheriff's offices at both Fort Madison and Keokuk.

**Analysis.** The Opinion engaged in a constitutional and statutory analysis in concluding that the Lee County Board of Supervisors may act independently under its county home rule authority to eliminate the county seat designation for one of the county's two county seats. In arriving at this conclusion, the Opinion analyzed three different categories of legal preemption that would prevent a county from legally utilizing its authority under county home rule authority in Iowa.

First, the Opinion addressed the issue of express preemption under county home rule authority. Express preemption occurs when a statute expressly prohibits county or city regulation within a particular area of law. The Opinion concluded that there is no statutory language in Iowa law that expressly limits the power of Lee County from designating its county seat.

Second, the Opinion addressed the issue of implied field preemption under county home rule authority, which occurs when a statute is of such comprehensive breadth as to reveal a state's clear intent to occupy the field in a particular area of regulation. The Opinion concluded that the 1848 Special Law is limited in scope and applies only to the operation of courts within Lee County, and relies on similar acts of the Legislature and court decisions to support this narrow interpretation of the 1848 Special Law.

Third, the Opinion addressed the issue of implied conflict preemption under county home rule authority. Implied conflict preemption occurs when a city or county action conflicts irreconcilably with a state statute. The Opinion addressed potential areas of conflict that might arise if Lee County were to adopt an ordinance to remove the county seat designation for one of its two county seats. The Opinion stated that "if Lee County passed an ordinance merely ending the designation of one of these cities as a county seat, the ordinance would not cause a direct conflict" with the 1848 Special Law which required Lee County to hold district court in both Fort Madison and Keokuk. The Opinion further noted that the Attorney General's Office has been "unable to find other statutes that would be irreconcilably inconsistent with an ordinance revoking designation of one of the current county seat designations in Lee County." The Opinion premised this conclusion, however, on the understanding that Lee County would not seek to close the district courts, clerk of court offices, or discontinue sheriff services to the district court in either Fort Madison or Keokuk, as such an action

*(Legal Update—Free Speech—Local Government Signage Regulations and First Amendment continued from page 12)*

would cause a direct, irreconcilable conflict with the 1848 Special Law.

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